

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
International Business Reply Service Competitive
Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2011-70

ORDER APPROVING AN ADDITIONAL
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3
NEGOTIATED SERVICE AGREEMENT

(Issued September 9, 2011)

I. INTRODUCTION

The Postal Service seeks to add a new International Business Reply Service contract to the International Business Reply Service Competitive Contract 3 product established in Docket No. MC2011-21. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

On August 19, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional International Business Reply Service (IBRS) contract.¹ The Postal Service requests that the instant contract be included within the IBRS Competitive Contract 3 product. *Id.* at 3.

In Order No. 684, the Commission approved the addition of IBRS Competitive Contract 3 to the competitive product list and the designation of the contract filed in Docket No. CP2011-59 as the baseline contract for future functional equivalence analyses.

The instant contract expires 1 year from its effective date unless it is terminated earlier. *Id.* at 3; Attachment 1 at 4. The Postal Service also filed supporting materials including Governors' Decision No. 08-24, a redacted copy of the contract and an application for non-public treatment of materials filed under seal.

The Postal Service asserts that the instant contract is functionally equivalent to the IBRS contract filed in Docket No. CP2011-59. *Id.* at 3. It also asserts that the “functional terms” of the instant contract and the “functional terms” of the baseline IBRS Competitive Contract 3 “are the same, although other terms that do not directly change the nature of the agreements’ basic obligations may vary.” *Id.* at 4. To that end, the Postal Service indicates that prices under IBRS contracts may differ based on volume or postage commitments and when the agreement is signed. It identifies certain customer-specific information that distinguishes the instant contract from the proposed baseline agreement. *Id.* at 5.

In Order No. 828, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.²

¹ Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 19, 2011, (Notice). See also Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement February 28, 2011 (Order No. 684).

² Notice and Order Concerning Filing of an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 25, 2011 (Order No. 828).

III. COMMENTS

Comments were filed by the Public Representative.³ No other interested person submitted comments. The Public Representative reviewed the contract's functional equivalence with the baseline agreement in Docket No. CP2011-59 and compliance with 39 U.S.C. 3633(a). *Id.* at 2. He states that except for minor differences the instant contract is essentially the same as the baseline agreement. The Public Representative endorses the Postal Service's determination that the cost and market characteristics are the same as the baseline agreement. *Id.* The Public Representative states that his review of the materials under seal indicates that it appears the instant contract should not lead to the subsidization of competitive products by market dominant products, should cover its attributable costs, and should have a positive net contribution to institutional costs. *Id.*

IV. COMMISSION ANALYSIS

The Commission must first review the instant contract to ensure its functional equivalence to the contract approved in Docket No. CP2011-59. Second, the Commission must ensure that the instant contract satisfies the requirements of 39 CFR 3015.5 and 3015.7, and 39 U.S.C. 3633.

Functional equivalence. The Postal Service states that the contract shares similar cost and market characteristics with the baseline contract. It asserts that the instant contract meets the pricing formula and classification established in Governors' Decision No. 08-24 which comport with 39 U.S.C. 3633 and the Commission's rules. The Postal Service states that the instant contract differs from the contract in Docket No. CP2011-59 regarding customer-specific information, *e.g.*, customer's name and address and representative's name, address, and email. Notice at 5.

³ Public Representative Comments on Postal Service Notice of Filing a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 1, 2011 (PR Comments).

The instant contract appears to be similar to the contract filed in Docket No. CP2011-59 and differs only in minor respects relative to customer-specific information. These differences notwithstanding, the Commission concludes that the instant contract may be included in the IBRS Competitive Contract 3 product.

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of 39 CFR 3015.5 and 3015.7, as well as 39 U.S.C. 3633. The Commission has reviewed the financial analyses provided under seal that accompanies the instant contract as well as the comments filed in this proceeding.

Based on the information provided, the Commission finds that the contract submitted should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products in 39 U.S.C. 3633.

Other considerations. The Postal Service shall notify the Commission of the effective date of the instant contract and notify the Commission if the contract terminates earlier than scheduled.

The instant contract, similar to the previous IBRS competitive contracts, contains price contingency clauses which allow the Postal Service flexibility to change rates without entering a new agreement. The Commission initially reviewed similar provisions in Docket No. CP2009-20.⁴ In Order No. 178, the Commission addressed the implications of the contingency clause in the contract in Docket No. CP2009-20, and

⁴ See Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 9 (Order No. 178); Docket No. CP2010-17, Order No. 377, Order Concerning Change in Prices for International Business Reply Service Contract 1 Negotiated Service Agreement, December 30, 2009.

determined that those conclusions apply to other contracts with similar provisions that specifically permit contingency prices.⁵

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2011-70 is appropriately included within the IBRS Competitive Contract 3 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract filed in Docket No. CP2011-70 is included within the IBRS Competitive Contract 3 (MC2011-21) product.
2. The Postal Service shall notify the Commission of the effective date of the instant contract and update the Commission if the contract terminates prior to the scheduled termination date.
3. The Postal Service shall file any modifications of price based on cost increases or contingency price provisions in the instant contract with the Commission as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary

⁵ The Commission explained that the Postal Service must file the changed rates under 39 CFR 3015.5 and give a minimum of 15 days' notice. However, unless the changed rates raise new issues, the Commission found that it would not anticipate a need to act further. See Order No. 178 at 9.